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62

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,413	10/16/2001	Naomi Nakao	G30-002	4498
7590 08/11/2004 Henry D. Coleman/R. Neil Sudol/William J. Sapone COLEMAN SUDOL SAPONE, P.C. 714 Colorado Avenue Bridgeport, CT 06605-1601			EXAMINER NGUYEN, VI X	
			ART UNIT 3731	PAPER NUMBER

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/978,413

Applicant(s)

NAKAO, NAOMI

Examiner

Victor X Nguyen

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 21 and 28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 and 28 is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3731

DETAILED ACTION

Claim Objections

1. Claim 28 is objected to because of an informality, which can be corrected as follows: In line 5, "a plurality of expandable or inflatable spacer member" should be replaced by- a plurality of expandable or inflatable spacer members- -. Correction is required.

Claim Rejections - 35 USC § 112

2. Claims 22-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 22-27 are rejected as being incomplete because they each depend from a cancelled claim (claim 20 was canceled). Therefore, they have not been further analyzed on their merits.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 6-7 and 9 are rejected under 35 U.S.C. 102 (e) as being anticipated by Edwards (U.S. 6,409,723).

Edwards discloses in fig. 1, an endoscopic assembly (120) having the limitations of claim 1, including: a tube (110) insertable through a channel of an endoscopic instrument (120), a

Art Unit: 3731

balloon having a pair of inflatable end members (113, 114) and at least one inflatable spacer (item 115 comprising a shaped balloon which is capable of pushing the inflatable end members 113, 114 apart from one another) and connecting the end members to one another. Inflation means (see col. 5, lines 1-34) coupled with the balloon for inflating the balloon; and wherein the spacer (115) member pushes the end members apart from one another.

Regarding claim 2, Edwards discloses a tube (110) connected to the balloon.

Regarding claims 6-7 and 9, Edwards discloses the inflatable end members are toroidal (fig. 3). The spacer (115) member is one of a plurality of inflatable spacer members each having one end connected to with one of the end members; and where the parts include a plurality of inflatable balloons (see col. 4, lines 23-67).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 and 8 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Edwards (6,409,723) in view of Chin et al (5,634,883).

Regarding claims 3-5, Edwards is explained as before. However, Edwards does not disclose the valve that is connected to the balloon.

Chin et al teach the valve that is connected to the balloon (figs. 33-34, item 115).

It would have been obvious to one having ordinary skill in the art at the same time the invention was made to modify Edwards by adding the valve that is connected to the balloon as taught by

Art Unit: 3731

Chin et al in order to prevent the return flow of the body fluid passing through it. Regarding claim 8, Edwards fails to disclose one of the inflatable end members has an aperture with a membrane. Chin et al teach one of the inflatable end members has an aperture with a membrane (figs. 34-35, item 114).

It would have been obvious to one having ordinary skill in the art at the same time the invention was made to modify Edwards by adding one of the inflatable end members having an aperture with a membrane as taught by Chin et al in order to drape and shield the internal body organs.

Allowable Subject Matter

4. Claims 21 and 28 are allowed.

The following is an examiner's statement of reasons for allowable subject matter: None of the prior art of record, alone or in combination, discloses an endoscopic retractor instrument comprising an inflation means operatively coupled with the balloon, and where one of the end member is formed with an opening or aperture transversable by an endoscope insertion member after an inflation of the balloon from the collapsed configuration to the expanded use configuration; and where a balloon or bladder including a pair of expandable or inflatable end members and a plurality of expandable or inflatable spacer members connected the end members to one another so that the end members and the spacer members communicated with one another.

Response to Amendment

5. Applicant's arguments filed 5/3/2004 have been fully considered but they are not persuasive. With respect to claim 1, the examiner disagrees with applicant's remarks that the middle balloon (211 of the Edward) device does not push the proximal and distal balloons (213,214) apart from one another. As the examiner has pointed out above, Edwards discloses in

Art Unit: 3731

fig. 1, an endoscopic assembly (120), including: a tube (110) insertable through a channel of an endoscopic instrument (120), a balloon having a pair of inflatable end members (113, 114) and at least one inflatable spacer (item 115 comprises a shaped balloon which is capable of pushing the inflatable end members 113, 114 apart from one another) connecting the end members to one another, and inflation means (see col. 5, lines 1-34) coupled with the balloon for inflating the balloon; where the spacer (115) member pushes the end members apart from one another.

Therefore, claim 1 of the invention is not defined over the Edward'723 reference.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen
Examiner
Art Unit 3731

Vn √
8/9/2004



JULIAN W. WOO
PRIMARY EXAMINER